IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.17767 of 1998

Date of Decision 22.11.2006

Sunil Kumar Chaudhary

...Petitioner

Versus

High Court of Punjab and Haryana through its Registrar.

...Respondents

Corum : HON'BLE MR.JUSTICE M.M.KUMAR

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Present: Mr.Arun Nehra, Advocate
with Ms.Anamika, Advocate
for the petitioner.

Dr.Balram Gupta, Sr.Advocate
with Mr.Lalit Gupta, advocate,
for the respondent.

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M.M.KUMAR,J.

The petitioner in the instant petition has prayed for issuance of direction to the respondent-High Court to grant him two pre-mature increments in pursuance of the decision of the Sub Committee dated 19.12.1989 (Annexure P-4). A further prayer has been made for quashing order dated 4.4.1998 (Annexure P-7) and letter dated 17.12.1998 (Annexure P-8) declining the aforementioned relief to him and discontinuing the policy decision dated 19.12.1989 (Annexure P-4), respectively, taken by the Sub Committee.

Brief facts of the case are that the petitioner was selected by the High Court in an open competition for appointment as Assistant in May, 1977. Accordingly, he joined such. He applied for the post of Assistant District Attorney in the State of Haryana in 1986 through proper channel. He was selected and in order to enable him to join duties, he was relieved on 28.5.1986 (Annexure P-1). It is pertinent to mention that while issuing the relieving order, the High Court has specifically stated in para No.2 that lien of the petitioner on the post of Assistant in this Court, has been retained. In the year 1990, a competitive examination for the appointment for the post of Reader was held in accordance with High Court Establishment (Appointment and Conditions) Service Rules, 1973 (for brevity the Rules). The petitioner succeeded and was appointed as Reader on 15.3.1991 (Annexure P-2). Against the name of the petitioner, it has been specifically mentioned that he is working as Sr.Assistant but he was then working on deputation as Assistant District Attorney in the office of Director Technical Education, Haryana. On 5.3.1991, the Registrar of this Court sent a communication to the Director Prosecution, Haryana to relieve the petitioner so as to enable him to join his duties as Reader (Annexure P-3).

A Sub Committee of two Hon'ble Judges in order to provide incentive to various categories of the employees of the High Court, took a decision on 19.12.1989 (Annexure P-4). In respect of Class III employees like petitioner, it was decided that their six years record was to be seen and if they had secured 4 Good (+B) Reports in the preceding six years then they were to be granted two annual grade increments. In case such an employee, has secured 3 Outstanding (A+) Reports in the preceding six years then he was to be granted three increments. It is pleaded that the aforementioned decision was accepted by the learned Acting Chief Justice in accordance with the provisions of Article 229 of the Constitution read with Rule 34(1) of the 'Rules'. It is claimed that the aforementioned decision of the Sub Committee became acceptable practice and a large number of employees were granted the benefit of pre-mature increments in accordance with their entitlement. In that regard, two order dated 7.6.1990 (Annexures P-5/P-5) in respect of S/Shri Sanjeev Malhotra, Assistant, Ojinder Singh-Secretary, Devinder Singh Saroya-Reader, T.S. Paintal -Reader, G.S.Dhiman-Pvt.Secretary, K.K.Prasher -Pvt.Secretary, Sukhdev Sharma-Restorer, Jagan Nath-I- Peon, Chhote Lal-Peon, Somi Lal-Peon, have been attached with the petiton to substantiate that the decision of the Sub Committee dated 19.12.1989 became a policy decision. Accordingly, the petitioner after rejoining as Reader

in the High Court made a representation on 11.04.1996 claiming that the benefit of pre-mature increments in accordance with the policy decision dated 19.12.1989 (Annexure P-4) be granted to him as well. He had placed reliance on the cases of above mentioned employees of the High Court, who have already been granted those benefits. However, his representation was rejected vide order dated 4.4.1998 (Annexure P-7) with the observation that it was considered and declined. He again represented on 27.11.1998 when he was informed vide order dated 17.12.1998 (Annexure P-8) that the decision of the Sub Committee dated 19.12.1989 for the grant of pre-mature increments to the employees had been discontinued under the orders of Hon'ble the Chief Justice. The petitioner has also placed reliance on the decision taken in the case of Shri H.C.Jaggi (Annexure P-9) where Committee of two Hon'ble Judges granted him the relief.

The stand of the High Court in the written statement is that the petitioner is not entitled to the grant of pre-mature increments because such increments could be given after he has completed six years of service subsequent to rejoining the High Court in the year 1991. It was in view of the aforementioned reason that the representation made by the petitioner was rejected on 18.1.1993 by holding that his case was not covered by the policy decision dated 19.12.1989

(Annexure P-4). It has been asserted that he completed six years in the year 1997 and by then benefit was withdrawn because a Division Bench of this Court in Civil Writ Petition No.7418 of 1993 decided on 19.10.1995 (Satinder Singh Bajwa vs. Punjab and Haryana High Court) held that the practice of giving advance increments or pre-mature increments was not to be followed in future.

After hearing learned counsel for the parties, I am of the considered view that this petition merits acceptance. It is not disputed that the Sub Committee of two Hon'ble Judges had taken a decision on 19.12.1989 (Annexure P-4) to the effect that pre-mature increments were to be granted to the employees of various classes. The decision of the Sub Committee in respect of Class III employee to which the petitioner belongs read as under:-

> "In the case of Class-III employees, six years record may be seen and if they are getting 4 Good (+B) reports in the preceding 6 years, they may be granted two increments. In case an employee of Class III has got 3 outstanding (+A) reports out of the six preceding years, he may be granted three increments.
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> To clarify, if an officer/official has not completed the requisite period of service,

for which his record is to be seen, the record in the post now held by him and in the lower post would be taken into consideration.

The aforesaid number of increments shall be reduced by the number of advance increments which anyone had already obtained during the period for which the service record is to be seen, total not to exceed 2 or 3, as the case may be but if anyone has been granted pre-mature/special increments because of his sports activity, merit or other good performance in the other field, the same shall not be taken into consideration while calculating the total number of increment.

However, no person shall be eligible for advance increment, if he is facing any departmental action or has suffered penalty during the said period."

It is also clear from the orders dated 7.6.1990(Annexure P-5) that a large number of employees were granted the benefit of two pre-mature increments. The representation of the petitioner was first rejected by Hon'ble the Chief Justice on 18.1.1993, on the ground that the policy decision dated 19.12.1989 did not cover his case. The operative part of the order

passed by Hon'ble the Chief Justice as reproduced in the Written Statement reads as under:-

> "During the intervening period, two premature increments were released to the employees of this Court who were covered by the guidelines framed by Sub Committee of Hon'ble Judges. These increments were also released to the officers/officials who were on deputation from this Court to other departments. Petitioner was, however, not on deputation and accordingly, he could not be granted that benefit.
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> On rejoining as Reader, the petitioner has been allowed the minimum of the scale i.e. Rs.2000/-. His pay as Asstt. District Attorney was less. Even his pay as Assistant would have been less had he continued in this Court. That being so, it is not a case of hardship under any normal rules."

A perusal of the above order would show that the petitioner has not been treated on deputation, although the order dated 15.3.1991 (Annexure P-2) giving him appointment on the post of Reader specifically states that the petitioner who has been working as Sr.Assistant, has been appointed/promoted on the post of Reader who was at that time working on

deputation as Assistant District Attorney. There is an entry No.4 of order dated 15.3.1991 (Annexure P-2) which reads as under:-

Sr.No.	Name	From	To	Remarks
Xx	XXX	XX	XX	XX
4.	Sh.Sunil Kumar Chaudhary	Sr.Assistant (presently on deputation as Asstt. District Attorney, in the Office of Directorate of Technical Educaiton, Haryana.	-do	Do-

It is also evident from the certified orders (Annexures P-10 to P-12) placed on record vide order dated 11.10.2006 passed in C.M.No.16970 of 2006, that the petitioner remained on deputation as Assistant District Attorney in the office of Director, Technical Education Department, Haryana, Sector 17, Chandigarh. Entry No.8 of order dated 28.1.1989 (Annexure P-10), entry No.123 of order dated 8.8.1989 (Annexure P-11) and certificate dated 2.2.2005 (Annexure P-12) clearly show that he has been treated on deputation. Therefore, for all intents and purpose, he has to be treated on deputation and the view expressed by Hon'ble the Chief Justice in his order dated 18.1.1993 is not sustainable in the eyes of law.

It is also clear that the benefits of decision dated 18.12.1989 would flow to the petitioner because

he was appointed in May, 1977 and he was relieved on 28.5.1986 to enable him to join as Assistant District Attorney. The petitioner was called back in 1991 from deputation after he had been cleared for appointment as Reader. Hon'ble the Chief Justice discontinued the policy dated 18.12.1989 on the directions issued by the Division Bench in C.W.P.No.7418 of 1993 decided on 19.10.1995 as is evident from order dated 20.12.1997 which is quoted by the respondent in its written statement. The policy, thus, remained in force from 18.12.1989 to 20.12.1997. The petitioner would be entitle to the benefits of increment as he had completed six years much earlier to the date of discontinuation of policy. Once the petitioner has been treated on deputation, then, all benefits in his parent department were available to the petitioner because he had maintained his lien on the post of Sr.Assistant. It is well settled that a deputationist is entitled to promotion, benefit of revision of pay scale and all other service benefits in his parent department. In that regard reliance may be placed on two judgements of the Supreme Court in the cases of Balkrishna Pandey v. State of Bihar (1996) 2 SCC 282 and Tejinder Dhawan v. Union of India (2003) ILLJ 217.

For the reasons aforementioned, this petition succeeds. A direction is issued to the High Court to grant the petitioner benefits of policy instructions

dated 18.12.1989 by granting the benefit of two or three increments as per his entitlement. The needful shall be done within a period of three months from today.

(M.M.KUMAR)
JUDGE

22.11.2006
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